



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,953	09/29/2003	Gregory D. Dietz	1792.001US1	5273

7590 09/12/2006
Lemaire Patent Law Firm, PLLC
P. O. Box 11358
St. Paul,, MN 55111

EXAMINER

JOHNSON, STEPHEN

ART UNIT PAPER NUMBER

3641

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,953

Applicant(s)

DIETZ, GREGORY D.

Examiner

Stephen M. Johnson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 10-17, 24, 25 and 27 is/are allowed.
- 6) ☒ Claim(s) 18-22 and 26 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☒ Claim(s) 1-27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3641

1. Applicant's election with traverse of species D (figs. 12, 14, 15, and 16) in the reply filed on 5/6/2005 is acknowledged.

Claims 6-9 are withdrawn from consideration as being directed to non-elected species.

Claims 1-5 and 10-27 read on the elected species and an action on these claims follows.

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 18, line 28, the phrase "the non-telescopic gun sight" lacks an antecedent.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19-22 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasselbusch (937).

Hasselbusch (937) discloses an apparatus comprising:

- | | |
|---|-----------------------|
| a) a non-telescopic gun sight ; | see figs. 1-4 |
| b) sighting means that is substantially enclosed; | 15; col. 4, lines 1-3 |
| c) compensation for distance; and | col. 3, lines 61-66 |
| d) compensation for target motion. | col. 2, lines 35-46 |

5. Claims 19-22 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobsen et al. (966).

Jacobsen et al. (966) disclose an apparatus comprising:

Art Unit: 3641

- a) a non-telescopic gun sight ; see fig. 1
- b) sighting means that is substantially enclosed; 65, 73
- c) compensation for distance; col. 4, lines 44-50
- d) compensation for target motion; and col. 6, lines 1-20
- e) a plurality of different sized indicators. col. 6, lines 42-45

6. Claims 19-21 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Finch (290).

Finch (290) discloses an apparatus comprising:

- a) a non-telescopic gun sight ; see fig. 1
- b) sighting means that is substantially enclosed; 21
- c) compensation for distance; and 5', 9, 11
- d) compensation for target motion. 1'

7. Claims 1-5, 10-17, 24-25, and 27 are allowed.

8. Claim 18 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

9. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. This application contains claims 6-9 drawn to an invention nonelected with traverse in the paper filed on 5/6/2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Art Unit: 3641

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned are 703-872-9306. As of July 15, 2005, the fax phone number for the organization where this application or proceeding is assigned will change to 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

Application/Control Number: 10/674,953

Page 5

Art Unit: 3641



Stephen M. Johnson
Primary Examiner
Art Unit 3641

STEPHEN M. JOHNSON
PRIMARY EXAMINER

SMJ

September 8, 2006